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# Information presented by the Australian Human Rights Commission*

## Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Australian Human Rights Commission,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

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# Annex

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## Contents


| | *Paragraphs* | *Page* |
|---|---|---|
| Introduction | 1–7 | 3 |
| 1. Background and framework for promotion and protection of human rights | 8–52 | 4 |
| 1.1 Scope of international obligations | 8-10 | 4 |
| 1.2 National framework | 11-16 | 5 |
| 1.3 Equality before the law and non-discrimination | 17-41 | 6 |
| 1.4 Migrants, refugees and asylum seekers | 42-47 | 15 |
| 1.5 Right to life, liberty and security of person | 48-52 | 17 |
| 2. Key national priorities, initiatives and commitments | 53-54 | 19 |
| Appendix | | 20 |

# Australian Human Rights Commission

# Australia's Universal Periodic Review, 2013 Progress Report

## Introduction

1. This UPR Progress Report operates as a statement of key human rights concerns and developments in Australia in 2013. The report is the third in a series of annual reports that are being developed in the lead up to Australia's second Universal Periodic Review (UPR) at the United Nations (UN) Human Rights Council in October 2015. Each report identifies important milestones as well as challenges that remain for the protection of human rights in Australia. The report is lodged with the Human Rights Council annually to provide further accountability for Australia's progress under the UPR.

2. The 2013 UPR Progress Report has been prepared by the Australian Human Rights Commission with input from the Australian Council of Human Rights Authorities (ACHRA), a body that brings together all Commonwealth, State and Territory anti-discrimination and human rights bodies.

3. Australia appeared before the Human Rights Council in 2011. 52 countries asked questions about Australia's human rights record and made 145 recommendations. The Australian Government accepted in full or in part over 90 per cent of these and also made a number of voluntary commitments to actions.

4. In June 2013 the Australian Government updated the Human Rights Council on its progress in implementing accepted recommendations prior to its next UPR appearance.[1] Australia will appear before the Human Rights Council for its second review in October-November 2015. This will involve an appraisal of implementation of existing commitments together with any additional issues which other countries participating in the process decide to raise.

5. Over the last 12 months there have been significant developments in a number of areas. ACHRA welcomes the following achievements:

- the launch of the National Action Plan on Human Rights
- the commencement of the National Disability Insurance Scheme
- the appointment of the first National Children's Commissioner.

6. Despite these positive developments, in other areas progress is lagging and much work needs to be done. The ongoing use of mandatory immigration detention and the transfer of asylum seekers to third countries for processing remains one of Australia's biggest human rights challenges. ACHRA remains concerned at the slow progress towards ratifying the *Optional Protocol on the Convention against Torture* (OPCAT), as well as lack of progress in advancing commitments made in the UPR process to review reservations to treaties.

7. This report is organised in accordance with the thematic groupings and headings that are used in the UPR reporting process.

[1] Australian Permanent Mission and Consulate-General Geneva, 'Submission of Australia's National Human Rights Action Plan 2012 constituting Australia's Universal Periodic Review mid-term report' (Media Release, 10 June 2013). At http://www.geneva.mission.gov.au/gene/statement477.html (viewed 31 October 2013).

## 1. Background and framework for promotion and protection of human rights

### 1.1 Scope of international obligations

8. During Australia's review, the Government made a commitment to improving Australia's monitoring of its international human rights obligations. Australia is a party to seven of the core human rights treaties and maintains a number of reservations under these. The Australian Government made a commitment to conduct a comprehensive review of such reservations by the end of 2012.[2] ACHRA is disappointed that there is no information available on the review process including any information on public consultation. ACHRA particularly calls for a focus on the necessity of the reservation to Art 37(c) of the *Convention on the Rights of the Child* (CRC) relating to children being held in adult detention facilities, in light of recent events in Western Australia.[3]

9. Several countries encouraged the Government to ratify the OPCAT.[4] The ratification and implementation of OPCAT is important as it will establish a national system of monitoring, ensuring that appropriate safeguards against torture exist in all places of detention. There are two sets of commitments under the OPCAT that require domestic action – legislation to enable monitoring visits of detention facilities, and the establishment of a national preventive mechanism for places of detention. It is likely that the Australian Government will avail itself of a mechanism upon ratification to delay the second of these actions for an additional time period of several years. While the commitment of the Government to work with the states and territories to implement model legislation for this first action is welcomed, ACHRA is concerned at the significant delays in implementing this longstanding commitment. It is now four and a half years since Australia signed OPCAT, with a view to taking the necessary steps to ensure Australia is in a position to ratify the treaty. ACHRA urges the government to refocus its efforts to ensure the swift ratification of OPCAT.

10. Following the release of a report by the UN High Commissioner for Human Rights a series of reform proposals are currently under consideration within the UN system.[5] Of particular relevance to the Australian context is the recommendation to States Parties to establish a Standing National Reporting and Coordination Mechanism (SNRCM) for human rights treaty engagement, including reporting and follow up.[6] ACHRA encourages the Government to streamline its processes for engagement with UN human rights treaty reporting and consider establishing an SNRCM. A SNRCM would likely provide a constructive and coordinated approach, and ensure that Australia has the resources and planning in place to engage with the UN mechanisms in a timely manner.

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[2] Attorney General's Department, *The National Human Rights Action Plan* (2012), p 7. At http://www.ag.gov.au/Consultations/Pages/NationalHumanRightsActionPlan.aspx (viewed 1 November 2013).

[3] *Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia* [2013] WASC 157.

[4] UPR Recs 1-6.

[5] N Pillay, *Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights* (2012). At http://www2.ohchr.org/english/bodies/HRTD/docs/HCreportonTBstrengthening210612.doc (viewed 1 November 2013).

[6] The reporting responsibilities for each of the treaties is currently split between different departments, and does not operate in the way envisaged in the High Commissioner's report.

### 1.2 National framework

11. The Australian Government has continued to implement a number of initiatives under the Human Rights Framework.[7] ACHRA welcomes the release of the National Human Rights Action Plan in December 2012.[8] ACHRA commends the Government for its commitment to the UPR in the Action Plan and the broad scope of issues covered in the plan. ACHRA notes that implementation to date has been slow and that many of the indicators will not be met within the agreed timeframe.

12. Throughout Australia's UPR a number of countries called for greater consolidation of Australia's anti-discrimination legislation.[9] The previous Australian Government committed to the development of a consolidated anti-discrimination law that would address the significant technical, definitional and operational differences between the four existing federal discrimination laws. A draft exposure bill was released for public comment in late 2012 however did not proceed beyond the draft exposure stage. While offering many improvements and simplifications to the existing laws, the bill met with significant public concern relating to issues including the grounds of discrimination covered, changes to the onus of proof, and the reference to behaviour that insults or offends within the definition of discrimination. ACHRA encourages the Government to consider options for reduced complexity and better consistency between the existing federal anti-discrimination laws, particularly to assist business.

13. The Parliamentary Joint Committee on Human Rights (PJCHR) has continued its role of scrutinising all Federal bills and legislative instruments to assess their compatibility with Australia's human rights obligations. The committee and process of statements of compatibility has quickly established itself as an important mechanism to implement Australia's international human rights obligations at the domestic level. Since its establishment the Committee has produced 18 reports to Parliament analysing hundreds of bills and legislative instruments and highlighting those bills which it considered raised human rights concerns. Through these reports (and also through the provision of two Practice Notes) the Committee has also provided clear guidance to government departments on their expectations about what level of human rights analysis statements of compatibility should contain. This has resulted in noticeable improvements in the quality of statements of compatibility. In 2013 the Committee's reports have included thematic examinations of three particular policy areas which were of concern to the Committee, relating to the use of civil penalty provisions, reinstatement of a system of third country processing for asylum seekers who arrive by boat to Australia, and the 'Stronger Futures' measures directed towards Aboriginal communities in the Northern Territory.

14. Human rights education must be a key priority and commitment for the Australian Government as it underpins the realisation of rights and fundamental freedoms. The Australian Human Rights Commission has led partnerships with government departments in the Australian Public Service (APS) through the APS Human Rights Officer's Network[10]

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[7] The Human Rights Framework was launched in 2010 and sets out a range of measures to help ensure that Australia gives effect to its international human rights obligations, placing particular emphasis on education and on greater parliamentary scrutiny. See Attorney General's Department, *Australia's Human Rights Framework*, http://www.ag.gov.au/RightsAndProtections/HumanRights/HumanRightsFramework/Pages/default.aspx (viewed 1 November 2013).

[8] Attorney General's Department, *The National Human Rights Action Plan*. At http://www.ag.gov.au/Consultations/Pages/NationalHumanRightsActionPlan.aspx (viewed 1 November 2013).

[9] UPR Recs 43-46.

[10] As of July 2013, the Australian Public Service Human Rights Network has 647 members.

and training resources on human rights law and policy have been developed for the APS by the Attorney-General's Department. Since the *2012 UPR Progress Report* a number of APS Human Rights Network events have been held which addressed disability rights, the rights of older persons and constitutional recognition for Aboriginal and Torres Strait Islander peoples.

15. The Australian Human Rights Commission has been working with the Australian Curriculum, Assessment and Reporting Authority (ACARA) to mainstream human rights education in the national curricula of schools. This work ensures relevant human rights issues are appropriately included in year level requirements. In 2013, the Australian Human Rights Commission identified the resource and teacher training needs in light of human rights content in finalised national curricula, (English, history and geography) and will release information and resources aimed at human rights education in the national schools curricula this year.

16. At the state and territory level, the *Human Rights Act 2004* (ACT) will be reviewed for its ten year anniversary in 2014. While the one and five year reviews found overwhelming public support for the act, reform is still needed.[11] The addition of the right to education from 1 January 2013 is welcome, however, ACHRA is concerned that the additional ground offers far less protection than for the comprehensive civil and political rights in the Act. ACHRA proposes that the right to education be treated as a 'full right' under the Act, and the addition of other economic, social and cultural rights, such as the right to housing and health.[12] The Australian Capital Territory (ACT) Human Rights Commission has also advocated for more specific recognition for Aboriginal and Torres Strait Islander people in the Human Rights Act, mirroring provisions in the Victorian Charter of Human Rights and Responsibilities, and reflecting the *UN Declaration on the Rights of Indigenous Peoples*.

### 1.3 Equality before the law and non-discrimination

17. The unacceptable level of disadvantage experienced by **Aboriginal and Torres Strait Islander peoples** was a prominent theme during Australia's UPR. Countries called upon Australia to ensure the full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples* (the Declaration).[13] Although the Australian Government declared its support for the Declaration in 2009, to date, progress to implement has been slow. Particularly in embedding the standards enshrined in the Declaration into domestic legislative and policy making processes. ACHRA welcomes the Government's commitment to work with the Australian Human Rights Commission and the National Congress of Australia's First Peoples (Congress) to increase awareness about the Declaration and embed the principles enshrined in the Declaration in all aspects of policy design, program development and service delivery.[14] The partnership between the Commission and Congress involves the development of a National Strategy to give effect to

[11] For example, the lack of damages and the high costs of the ACT Supreme Court are additional barriers to access to justice for complainants bringing actions, and therefore there is only basic ACT jurisprudence.

[12] As recommended by the ACT Economic, Social and Cultural Rights (ACT ESCR) research project led by Professor Hilary Charlesworth and Professor Andrew Byrnes. See Australian National University, *ACT economic, social and cultural rights project*, http://regnet.anu.edu.au/content/act-economic-social-and-cultural-rights-project (viewed 1 November 2013).

[13] UPR Recs 106 and 107.

[14] Joint Statement by the Australian Government and the Australian Human Rights Commission at Agenda Item 7 (Delivered at the twelfth session of the United Nations Permanent Forum on Indigenous Issues, New York, 20-31 May 2013).

the Declaration within a framework of self-determination; participation in decision making; non-discrimination and equality; and respect for and protection of culture. It also involves a series of conversations over the next 12 months with Aboriginal and Torres Strait Islander communities (and organisations) about implementation at the community level. ACHRA reiterates the need for a comprehensive implementation strategy on the Declaration and is pleased to note that government departments are increasingly referencing the Declaration as a part of this process. Despite the recent progress, ACHRA notes that the Declaration is not included in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth)[15] nor was it included in National Human Rights Action Plan.

18. A number of countries called upon Australia to commit to the recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution.[16] ACHRA welcomes the support from all Australian political parties for a referendum to change the Constitution, reflected through the passage of the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) in the Australian Parliament in March 2013. ACHRA notes that the Act provides acknowledgement of Aboriginal and Torres Strait Islander peoples' unique place as Australia's first peoples[17] and prescribes that a review will be commenced considering proposals for constitutional change and their likely levels of support in the community.[18] ACHRA supports the establishment of a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples in late 2012.[19] ACHRA further notes that the Joint Select Committee was asked to consider 'the recommendations of the Expert Panel on Constitutional Recognition of Indigenous Australians on the process for the referendum.'[20] ACHRA reiterates its support for constitutional recognition and calls on the Government to reconstitute the Joint Select Committee as a matter of urgency and require that it builds on the work of the Expert Panel to ensure that the progress for a referendum does not lose momentum.

19. Countries called upon Australia to intensify efforts to reduce the life expectancy gap between Indigenous and non-Indigenous Australians and increase the commitment to reducing socio-economic inequalities.[21] As noted in the *2012 UPR Progress Report*, Australian governments continue to work in addressing socio-economic inequalities within the Aboriginal and Torres Strait Islander population through the Closing the Gap Strategy.[22] ACHRA reiterates its support for this increased attention and government activity. ACHRA again suggests there is a need for a more holistic, integrated and coordinated approach to addressing socio-economic inequalities including health.[23]

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[15] *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 3(1).

[16] UPR Recs 104, 105 and 107.

[17] *Aboriginal and Torres Strait Islander Peoples Recognition Act 2012* (Cth), s 3.

[18] *Aboriginal and Torres Strait Islander Peoples Recognition Act 2012* (Cth), s 4.

[19] Commonwealth, *Journals of the Senate: No 128, Senate*, 28 November 2012, p 3471. At http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber/journals/20121128_SJ128/0000%22 (viewed 28 October 2013).

[20] Commonwealth, *Journals of the Senate: No 128, Senate*, 28 November 2012, p 3471. At http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber/journals/20121128_SJ128/0000%22 (viewed 28 October 2013).

[21] UPR Recs 113, 115–118.

[22] Council of Australian Governments (COAG), *Closing the Gap in Indigenous Disadvantage*, http://www.coag.gov.au/closing_the_gap_in_indigenous_disadvantage (viewed 24 October 2013).

[23] See Close the Gap Campaign Steering Committee, *Building on the Close the Gap platform: Commitments for an incoming government* (2013), http://www.humanrights.gov.au/close-gap-indigenous-health-campaign (viewed 24 October 2013).

20. ACHRA supports the work of the Close the Gap Campaign for Indigenous Health Equality.[24] In July this year the Australian Government released the National Aboriginal and Torres Strait Islander Health Plan 2013–2023 (Health Plan).[25] The Health Plan was developed in partnership with Aboriginal and Torres Strait Islander peoples including the National Health Leadership Forum.[26] The Health Plan, if effectively implemented, can drive action to achieving the goal of closing the health and life expectancy gap by 2030.[27] ACHRA commends the Australian Government on this and encourages the Government to work in partnership with Aboriginal and Torres Strait Islander people and their representatives to implement the Health Plan. ACHRA however remains concerned about ongoing and sustainable national funding. The National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes expired in 2013 and whilst the Federal Government committed a further $777m over the next three years, this has not been matched by all states and territories. ACHRA calls on the Australian Government to work with state and territory governments to renegotiate this important funding agreement.

21. Concerns were also raised about the disproportionate representation of Aboriginal and Torres Strait Islanders within the criminal justice system.[28] ACHRA welcomes the inclusion of the development of diversionary options for Koori women as an action item under the Victorian Aboriginal Justice Agreement 3 and the re-affirmation of this commitment by the Victorian Government in 2012. The Victorian Equal Opportunity and Human Rights Commission has recently completed research which confirmed the compelling need for a more comprehensive and effective approach to reducing the increasing incarceration of Koori women, noting that 80% of Koori women in Victorian prisons are mothers.[29] Accordingly, preventative and diversionary responses must be tailored to the particular needs and circumstances of these women. Work is now underway on a Koori Women's Diversion Project in that jurisdiction.

22. The issue of **equality for women and men** was raised by a number of countries. In the area of pay and employment, ACHRA welcomes the measures taken under the new *Workplace Gender Equality Act 2012* (Cth) (previously the *Equal Opportunity for Women in the Workplace Act 1999* (Cth))[30] in particular the development of reporting matters for the gender equality indicators identified in the Act. The passing of the *Fair Work Amendment Act 2013* (Cth) in June is also a welcomed development. The Act expands the right to request a flexible working arrangement (beyond parents of children under school age and children with a disability below the age of 16 years) to parents and carers of children who are of school age or younger, as well as to carers of people with disability, people aged 55 or older and to those experiencing or supporting an immediate family or

[24] Close the Gap Campaign, *Statement of Intent*, http://www.humanrights.gov.au/publications/close-gap-indigenous-health-equality-summit-statement-intent (viewed 24 October 2013).

[25] Department of Health and Ageing, *National Aboriginal and Torres Strait Islander Health Plan 2013–2023*, (2013). At http://www.health.gov.au/natsihp (viewed 24 October 2013).

[26] The national representative body for Aboriginal and Torres Strait Islander health peak bodies.

[27] Close the Gap Campaign Steering Committee, *Building on the Close the Gap platform: Commitments for an incoming government* (2013), http://www.humanrights.gov.au/close-gap-indigenous-health-campaign (viewed 24 October 2013).

[28] UPR Recs 90, 92, 93 and 95.

[29] Victorian Equal Opportunity and Human Rights Commission, *Unfinished business: Koori women and the justice system (2013). At* http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/koori-women-and-prisons *(viewed 4 November 2013).*

[30] This new legislation applies to both men and women and covers all employees and employers in the workplace. The principal objects of the Act have been amended to promote and improve gender equality in the workplace, with specific recognition of equal remuneration and family and caring responsibilities as issues that are central to improving women's participation in the workforce.

household member who is experiencing domestic/family violence. Further positive developments include the review of the National Paid Parental Leave scheme in 2013, the provision for up to two weeks of government-funded 'Dad and Partner Pay' at minimum wage (from January 2013), and funding for the development of the *Women in male-dominated industries: A Toolkit of strategies*.[31] Despite a number of initiatives being implemented in the area of pay and employment, ACHRA is concerned that the current national gender pay gap remains relatively unchanged at 17.5%,[32] while the average (mean) superannuation payouts for women is also just over half (57%) those of men.[33]

23. Australia accepted the recommendation to adopt targets of 40% of women on public boards, and agreed to work with the private sector to achieving gender balance in private sector leadership ranks and forums. ACHRA welcomes the Government's commitment to achieving a target of at least 40% women and 40% men on Australian Government boards by 2015. A recent report found that 38.4% of Government board appointments were held by women as at 30 June 2012,[34] a 3.1% increase from 2011. Since the introduction of reforms by the Australian Stock Exchange[35] the percentage of women on boards of the top 200 ASX companies has increased from 8.30% in 2010 to 16.6% in October 2013.[36] ACHRA notes that the 2012 Australian Census of Women in Leadership Census showed that only 12 ASX 500 companies have female chief executive officers and women comprise only 9.2% of executives in the ASX 500.[37]

24. Several countries raised concerns about the high level of violence against women. ACHRA welcomes the release of the first *Progress Report to the Council of Australian Governments 2010 – 2012* on the National Plan to Reduce Violence against Women and their Children in 2013, and the commencement of the second three-year phase of the National Plan in 2014. AHCRA notes that still there remains no formal, independent monitoring or evaluation for the National Plan. In 2013, the National Centre of Excellence was formally launched, tasked with developing an evidence-base to drive policy and programs focused on reducing violence against women and their children. This new

[31] As part of the US-led multilateral initiative, the *Equal Futures Partnership To Expand Women's Political And Economic Participation*, in which Australia is a partner, the Australian Government funded the Australian Human Rights Commission to produce this online Toolkit. The Toolkit provides practical suggestions and examples of successful strategies for increasing women's representation in male-dominated industries. See Australian Human Rights Commission, *Women in male-dominated industries: A toolkit of strategies* (2013). At https://www.humanrights.gov.au/women-male-dominated-industries-toolkit-strategies (viewed 13 October 2013).

[32] Workplace Gender Equality Agency, 'The cost of being female: 64 extra days at work' (Media Release, 2 September 2013). At http://www.wgea.gov.au/news-and-media/cost-being-female-64-extra-days-work (viewed 30 October 2013). Based on the Australian Bureau of Statistics, *6302.0 – Average Weekly Earnings, Australia, May 2013*, (15 August 2013). At http://www.abs.gov.au/ausstats/abs@.nsf/Products/6302.0~May+2013~Main+Features~Key+Figures?OpenDocument (viewed 13 October 2013).

[33] R Clare, *Developments in the level and distribution of retirement savings* (2011), p 10.

[34] The Department of Social Services. *Gender Balance on Australian Government Boards Report 2011-2012*. At http://www.dss.gov.au/our-responsibilities/women/publications-articles/gender-balance-on-australian-government-boards-report-2011-2012 (viewed 1 November 2013).

[35] The reforms required all publically listed companies in Australia to set gender diversity policies and targets and to report on their policies and targets and provide explanations if they are not in place.

[36] Australian Institute of Company Directors, *Statistics*, at http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics (viewed 1 November 2013).

[37] The Workplace Gender Equality Agency, *2012 Australian Census of Women in Leadership*. At http://www.wgea.gov.au/lead/2012-australian-census-women-leadership (viewed 1 November 2013).

initiative is jointly funded by Commonwealth, State and Territory governments on a cost shared basis.

25. ACHRA notes that almost two-thirds of women affected by domestic and family violence in Australia are in some form of paid employment.[38] As discussed in the *2012 Progress Report*, ACHRA calls for the introduction of a new ground of discrimination concerning domestic and family violence, within the federal anti-discrimination legislation.[39] ACHRA commends the Government's ongoing commitment to the review of treatment of women in the Australian Defence Force and the Australian Defence Force Academy,[40] and welcomes the recent initiatives to address female genital mutilation in Australia. These include: a review of Australia's legislative framework,[41] a National Summit,[42] the establishment of a National Compact, and the provision of additional funding for projects addressing the elimination of female genital mutilation.

26. Over the last 12 months the Australian Government has undertaken a number of initiatives to strengthen its efforts to combat human trafficking. Such measures include: the adoption of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012* (Cth);[43] the enactment of the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth).[44] The Joint Standing Committee on Foreign Affairs, Defence and Trade also completed its Inquiry on Slavery, Slavery-like conditions and People Trafficking, and released its finding in June 2013.[45]

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[38] Australian Bureau of Statistics, *Personal Safety Survey 2005*, (Reissue) Catalogue No 4906.0 (2006), p 34. At www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument (viewed 10 August 2012).

[39] See Australian Human Rights Commission, *Consolidation of Commonwealth Discrimination Law: Supplementary Submission to the Attorney-General's Department* (23 January 2012). At http://humanrights.gov.au/legal/submissions/2012/20120123_consolidation.html (viewed 29 March 2012).

[40] Phase 3 of the Review of the treatment of women within the Australian Defence Force (ADF) and the Australian Defence Force Academy (ADFA), conducted by Sex Discrimination Commissioner Elizabeth Broderick is currently underway and involves an audit of the implementation of the recommendations in the Phase 1 and Phase 2 reports. The Audit Report: *Review into the Treatment of Women at the Australian Defence Force Academy* was released in 2013. The Audit Report can be accessed at: https://www.humanrights.gov.au/publications/audit-report-review-treatment-women-australian-defence-force-academy.

[41] The Attorney General's Department, *Review of Australia's Female Genital Mutilation legal framework – Final Report* (2013). At http://www.ag.gov.au/Publications/Pages/ReviewofAustraliasFemaleGenitalMutilationlegalframework-FinalReportPublicationandforms.aspx (viewed 1 November 2013).

[42] The Department of Health, *National Female Genital Mutilation Summit.* At http://www.health.gov.au/internet/main/publishing.nsf/Content/national-fgm-summit (viewed 1 November 2013).

[43] The Act recognises several additional trafficking, slavery and slavery related crimes including forced labour, forced marriage and organ trafficking.

[44] The Act extends existing vulnerable witness protections to adult victims of slavery, slavery-like and human trafficking offences, and includes specific protections for witnesses who may be vulnerable due to a particular characteristic (eg due to a disability or their cultural background). The Act also places the burden of proving the defendant was aged 18 or over on the prosecution.

[45] Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking* (2013). At http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/report.htm (viewed 1 November 2013).

27. Over the last 12 months the Government has made progress in protecting and promoting the **rights of the child**. ACHRA welcomes the appointment of the inaugural National Children's Commissioner on 25 February 2013. The first National Children's Commissioner commenced her term on 25 March 2013. Fundamental to her role is respect for the views of children. It is therefore significant that her initial work has been to listen to the views of children and their advocates, and take them into account in deciding her priorities for action. The *Big Banter* was the listening tour that she conducted across Australia including city, rural and remote areas. The National Children's Commissioner tabled her first statutory Report to Parliament at the end of 2013. She identified five key themes arising from her listening tour. These include a right to be heard; the opportunity to thrive; the right to safety and freedom from violence; engaged civics and citizenship; action and accountability.

28. Australia appeared before the UN Committee on the Rights of the Child in June 2012, yet has delivered no formal response to the Committee's Concluding Observations.[46] ACHRA encourages the Government to respond to the Concluding Observations outlining how it intends to address each recommendation, and provide timelines and benchmarks for implementation.

29. ACHRA welcomes the Government's commitment to children's rights through its implementation of the National Framework for Protecting Australia's Children 2009–2020, the National Plan to Reduce Violence against Women and their Children 2010–2022, and the establishment of a Royal Commission to investigate Institutional Responses to Child Sexual Abuse in January 2013.[47]

30. The Australian Government has undertaken initiatives to strengthen the **rights of older persons** in Australia. In 2013, the Government legislated to make some major reforms to the Australian aged care system.[48] This 10 year reform program aims to create a more flexible and consumer focussed system aimed at providing greater control and choice of age care services. ACHRA welcomes the consumer directed focus of the reforms and the focus on supporting and enabling people to remain independent for as long as they are able.

31. Australia has relatively low workforce participation rates amongst older people when compared with other OECD countries.[49] In 2012–13 the Australian Law Reform Commission (ALRC) conducted an inquiry into Commonwealth laws that prevent older people from participating in work. The ALRC was asked to identify any changes that could be made to Commonwealth legislation and legal frameworks to remove barriers. ACHRA

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[46] Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/AUS/CO/4 (2012). At http://www2.ohchr.org/english/bodies/crc/crcs60.htm (viewed 19 November 2013).

[47] The Royal Commission into Institutional Responses to Child Sexual Abuse, http://www.childabuseroyalcommission.gov.au/ (viewed 19 November 2013).

[48] Department of Health, *Living Longer Living Better* (2013). At https://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-review-measures-living.htm (viewed 31 October 2013).

[49] In 2011, 61.1% of Australians aged 55 to 64 were participating in the workforce, more than 10 percentage points lower than New Zealand with participation rates at 73.7%. See: OECD, *How do OECD labour markets perform? Employment to population ratios, Older workers as a percentage of population aged 55-64* (2010). At http://www.oecd.org/document/22/0,3746,en_2649_37457_43221014_1_1_1_37457,00.html#erate (viewed 18 June 2012). See also *Workforce participation and non-participation among baby boomers in Australia: a profile from HILDA data*, Brotherhood of St Laurence (2011), p.16. At http://www.bsl.org.au/pdfs/Gong_McNamara_Workforce_participation_and_non-participation_profile_2011.pdf (viewed 18 June 2012).

welcomes the 36 recommendations made by the inquiry.[50] A major coordinating recommendation was for the development of a National Mature Age Workforce Participation Plan.[51]

32. The previous Federal Government set up the Insurance Reform Advisory Group (IRAG) to improve insurance provisions generally. IRAG recommended that insurance limitations for older people be investigated, including the standard of data used to limit coverage. Some of the limitations apply to income protection insurance for older people. In addition to the IRAG recommendation, the ALRC recommended that the Australian Human Rights Commission develop guidance material on the insurance exception in the *Age Discrimination Act 2004* (Cth). The Age Discrimination Commissioner is currently conducting a project aimed at extending insurance coverage for older people by working with insurance stakeholders to investigate available insurance data and by providing clarity about the insurance exception in the *Age Discrimination Act 2004* (Cth). In May 2013 the Tasmanian Anti-Discrimination Commissioner concluded an investigation into the practice of insurance companies excluding or restricting insurance cover to volunteer workers on the basis of their age. ACHRA encourages the Government to consider the recommendation to develop a discrimination compliance code at the national level aimed at clarifying the way in which discrimination law applies in the provision of insurance.[52]

33. A number of countries highlighted the need for greater promotion and protection of the **rights of people who are lesbian, gay, bisexual, trans, gender diverse and intersex** (LGBTI).[53] ACHRA strongly welcomes the new protections against discrimination on the basis of sexual orientation, gender identity and intersex status in federal anti-discrimination laws.[54] The changes commenced on 1 August 2013. The legislation also qualifies the exemptions for religious organisations to the effect that it does not apply to conduct connected with the provision of Commonwealth-funded aged care services. At the state and territory level, the Tasmanian Government has adopted changes to the *Anti-Discrimination Act 1998* (Tas) to safeguard the rights of those with diverse gender identities or who are intersex.

34. ACHRA also welcomes the Australian Government Guidelines on the Recognition of Sex and Gender.[55] The Guidelines apply across the federal government and recognise that individuals may identify and be recognised within the community as a gender other

[50] Australian Law Reform Commission, *Access All Ages—Older Workers and Commonwealth Laws* (ALRC Report 120) (2013). At http://www.alrc.gov.au/publications/access-all-ages-120-summary (viewed 31 October 2013).

[51] Other key recommendations concerned the need to harmonise and extend workers' compensation schemes so that they provide coverage for workers for as long as they remain in the workforce. The ALRC called for the abolition of compulsory retirement ages in some professions and the removal of limiting licensing or re-qualification requirements for older people. Recommendations also focussed on insurance reform and on ending age discrimination by promoting the rights and value of mature age workers. Key enablers of mature age employment are recruiters, job services providers and employers and they are the focus of many recommendations.

[52] Anti-Discrimination Commissioner Tasmania. *Volunteers, Age and Insurance: Investigation Report* (2013). At http://www.antidiscrimination.tas.gov.au/__data/assets/pdf_file/0006/253653/2013.05-FINAL-Investigation_Report-Insurance_and_Volunteering.pdf (viewed 6 November 2013).

[53] UPR Rec 66-70.

[54] The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) amended the *Sex Discrimination Act 1984* (Cth).

[55] Attorney-General's Department, *Consultation on Australian Government Guidelines on the Recognition of Sex and Gender*, http://www.ag.gov.au/consultations/pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx (viewed 23 October 2013).

than the sex they were assigned at birth, or as an indeterminate sex and/or gender, and this should be recognised and reflected in their personal records held by Australian Government departments and agencies. ACHRA recommends that the Government should use the Guidelines as a platform for developing a nationally consistent approach to the legal recognition of sex and/or gender with state and territory governments and implement the remainder of the recommendations in the *Sex Files Report*.[56] In November 2013 the ACT Government introduced amendments to the *Births, Deaths and Marriages Act 1997* to remove discrimination against transgender and intersex persons. The amendments remove sexual reassignment surgery as a pre-requisite for change of legal sex.[57]

35. ACHRA is disappointed that the Government rejected the recommendation to amend the *Marriage Act 1961* (Cth). ACHRA is concerned that the Australian Government continues to discriminate against same-sex couples and against people with diverse sex and genders by denying them the right to marry. In October 2013 the ACT Legislative Assembly passed the *Marriage Equality (Same Sex) Act* 2013 to allow same-sex couples to marry in the ACT. This Act is currently the subject of a constitutional challenge in the High Court of Australia.

36. A number of countries made recommendations related to the ***rights of people with disability***. Following Australia's UPR the National Disability Strategy 2010–2020 (NDS)[58] was formally endorsed by the Council of Australian Governments (COAG) in 2011. ACHRA notes that the NDS should play an important role in ensuring that the principles underpinning the *Convention on the Rights of Persons with Disabilities* are incorporated into policies and programmes affecting people with disability, their families and their careers. ACHRA welcomes the 2010–2020 Report to COAG 2012 which incorporates the first implementation plan *Laying the Groundwork 2011–2014*.[59] ACHRA notes with concern the lack of development of performance indicators to demonstrate change over time in the six outcome areas of the NDS.

37. ACHRA applauds the Government for the commencement of the National Disability Insurance Scheme on 1 July 2013 and the referral of an inquiry into Legal Barriers for People with Disabilities to the ALRC in July 2013.[60] Consultations for the inquiry are currently taking place, and the ALRC will release its report next July.

38. ACHRA remains concerned that employment rates of people with disability have been stagnant since the passage of the *Disability Discrimination Act 1992* (Cth), indicating that barriers remain which prevent people with disability from achieving full, effective, and inclusive participation in society. Overall employment rates for people with disability remain low, with labour force participation at around 54%, compared to 83% for people

[56] Australian Human Rights Commission, *Sex files: The sex and gender diversity project concluding paper* (2009). At http://www.humanrights.gov.au/sex-files-legal-recognition-concluding-paper-sex-and-gender-2009 (viewed 23 October 2013).

[57] Births, Deaths and Marriages Registration Amendment Bill 2013 (ACT). At http://www.legislation.act.gov.au/b/db_48870/default.asp (viewed 29 November 2013).

[58] Department of Social Services, *National Disability Strategy 2010–2020* (2011). At http://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf (viewed 23 October 2013).

[59] Department of Social Services, *Report to the Council of Australian Governments* (2012). At http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012 (viewed 23 October 2013).

[60] Australian Law Reform Commission, *Legal Barriers for People with Disabilities*. At http://www.alrc.gov.au/inquiries/legal-barriers-people-disability (viewed 23 October 2013).

without disability.[61] There has been a consistent decline in employment levels of people with disability in the Australian Public Service over the last 20 years from 5.8% in 1992, to 3.7% in 2001, to 2.9% in 2012.[62] ACHRA is further concerned by the continuing problems facing people with physical disability in accessing public transport, including public interstate transport.

39. A number of countries expressed concern that the current legislative framework fails to protect women and children with a disability from unauthorised, non-therapeutic and forced sterilisation.[63] The Australian Human Rights Commission made a submission to the Senate Inquiry into Involuntary or Coerced Sterilisation of People with Disabilities in Australia based on the Commission's recognition that involuntary or coerced sterilisation constitutes a form of violence and violates multiple human rights.[64] The Inquiry Report, released on 17 July 2013 emphasised the importance of education and awareness-raising for people with disability, families and carers, medical practitioners and legal practitioners.[65] ACHRA welcomes the committee's recommendation that a 'best interests' test is inappropriate.[66]

40. Women with disability experience violence at significantly higher rates, more frequently, for longer, in more ways and by more perpetrators compared to women and girls without disability.[67] ACHRA notes that there is inadequate research and no national data on the prevalence and nature of such violence.[68] The National Plan to Reduce Violence against Women and their Children does not specifically address some forms of violence experienced by women and girls with disability, for example forced sterilisation and abortion, and exploitation, neglect or violence in institutional settings. However, under the National Plan the Government has funded the Stop the violence against women with

[61] Australian Bureau of Statistics (ABS), *Disability Australia 2009*, 4446.0 (2011). At http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4446.0main+features92009 (viewed 23 October 2013).

[62] Australian Public Service Commission, *Workplace Diversity Report 2000–01* (2001) p73. At http://www.apsc.gov.au/publications-and-media/print-only (viewed 23 October 2013); Australian Public Service Commission, *State of the Service Report, State of the Services Series 2011–12* (2012) p 143. At http://www.apsc.gov.au/publications-and-media/print-only (viewed 23 October 2013).

[63] UPR Rec 39.

[64] Australian Human Rights Commission, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (2012). At http://www.humanrights.gov.au/submissions/involuntary-or-coerced-sterilisation-people-disabilities-australia (Viewed 23 October 2013).

[65] The Senate Community Affairs References Committee. *Involuntary or Coerced Sterilisation of People with Disabilities in Australia.* (July 2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/First_Report (Viewed 23 October 2013).

[66] At the time of release the Australian Human Rights Commission welcomed the recommendations that the 'best protection of rights test' be developed and implemented, that sterilisation without consent for a person with a disability who has the capacity to consent should be banned, and that sterilisation without consent for a person with a disability who has the capacity to consent when provided with appropriate decision-making support should be banned. See Australian Human Rights Commission, 'Sterilisation: 'best interests' test is inappropriate', (Media Release, 18 July 2013). At http://www.humanrights.gov.au/news/stories/sterilisation-best-interests-test-inappropriate (viewed 6 November 2013).

[67] Women With Disabilities Australia, *Submission to the Australian Government Consultation Paper: Family Violence – Improving Legal Frameworks* (June 2010), p 6. At www.wwda.org.au/WWDASubFVL2010.pdf (viewed 31 July 2012).

[68] Women With Disabilities Australia, *Submission to the UN Analytical Study on Violence against Women With Disabilities* (December 2011), para 7. At www.wwda.org.au/WWDASubUNStudyViolenceWWDDec2011.pdf (viewed 31 July 2012).

disability and girls research project which also aligns with the National Disability Strategy 2010–2020.[69] The current draft National Disability Insurance Scheme also contains no specific measures addressed at violence against women and girls with disability.

41. ACHRA is concerned that parents with disability appear more likely to be the subject of child care and protection interventions than parents without disability, in particular, parents with cognitive impairments and mental illness. This includes intervention prior to birth where there has been no assessment of the person's capacity to parent. ACHRA remains concerned that parents of children with disabilities are driven to relinquish the care of their children to the state because they are unable to access appropriate support.[70]

### 1.4 Migrants, refugees and asylum seekers

42. The situation and treatment of **refugees and asylum seekers** in Australia was called into question during Australia's UPR.[71] ACHRA agrees with many of the concerns raised, and believes that more must be done to bridge the gap between Australia's human rights obligations under international law and the current treatment of asylum seekers and refugees.[72] The increased use of community arrangements for asylum seekers and refugees has been a welcomed development; however the number of people in closed detention facilities, particularly children, remains of deep concern.[73] The harmful impact of prolonged and indefinite detention on mental health is well-established. Between January 2011 and February 2013 there were 4,313 incidents of actual, threatened and attempted serious self-harm recorded in immigration detention facilities in Australia.[74]

43. ACHRA remains extremely concerned for those who have received adverse security assessment, many of whom will continue to be detained indefinitely in closed immigration detention facilities. In August 2013, the UN Human Rights Committee found that the indefinite detention of a group of 46 refugees with adverse assessments was inflicting serious psychological harm upon them, amounting to cruel, inhuman or degrading treatment under article 7 of the *International Covenant on Civil and Political Rights* (ICCPR), and was arbitrary contrary to article 9(1) of the ICCPR.[75] ACHRA welcomed the appointment of an Independent Reviewer for Adverse Security Assessments in the 2012 Progress

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[69] Women with Disabilities Australia, People with Disability Australia and The University of NSW, *Stop the Violence*, http://www.stvp.org.au/index.htm (viewed 5 November 2013).

[70] Victorian Equal Opportunity and Human Rights Commission, *Desperate Measures: the relinquishment of children with disability into state care* (May 2012). At http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/153-desperate-measures-the-relinquishment-of-children-with-disability-into-state-care-in-victoria-may-2012 (viewed 27 November 2013).

[71] UPR Recs 121-134.

[72] See Australian Human Rights Commission, *Asylum seekers, refugees and human rights: Snapshot report (2013). At* http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report *(viewed 1 November).*

[73] As of 30 September 2013 there were 6,403 people in immigration detention facilities, this included 1,078 children in immigration detention facilities. Department of Immigration and Border Protection, *Immigration Detention Statistics*, http://www.immi.gov.au/About/Pages/about-immigration-detention.aspx?heading=immigration-detention-and-community-statistics (viewed 1 November 2013).

[74] See Commonwealth Ombudsman, *Suicide and Self-harm in the Immigration Detention Network* (2013), p 150. At www.ombudsman.gov.au/reports/investigation/2013 (viewed 1 October 2013).

[75] Human Rights Committee, *F K A G et al v Australia*, note 65, paras 9.4 and 9.8; Human Rights Committee, *M M M et al v Australia*, Communication No. 2136/2012, UN Doc CCPR/C/108/D/2136/2012 (2013), paras 10.4 and 10.7. At www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx (viewed 1 October 2013).

Report. However notes that greater transparency and accountability within the review process is still needed, and encourages the Government to consider alternative options to indefinite detention in closed facilities.

44. The transfer of asylum seekers who have arrived by boat to third countries for processing of their claims presents a number of challenges. Under international law Australia has an obligation to protect the human rights of all asylum seekers and refugees who come to Australia, regardless of their mode of arrival.[76] Australia cannot avoid its international human rights obligations by transferring asylum seekers to third countries. ACHRA is concerned that third country processing arrangements may breach a number of Australia's obligations including the principle of *non-refoulement,*[77] and other obligations related to conditions of detention, length of the detention and procedures for processing claims.[78] AHCRA notes that in June 2013 the PJCHR, having examined the legislative framework underpinning the regional processing regime, concluded that there was a significant risk that the third country processing regime was incompatible with a number of human rights.[79]

45. A number of recommendations were made to the Australian Government to enhance its efforts to address and prevent racism towards **people from culturally and linguistically diverse backgrounds.**[80] ACHRA notes with concern the growing level of racial hatred and vilification, particularly online,[81] and commends the Australian Government for its ongoing commitment to combatting racism through the National Anti-Racism Partnership. An important part of the strategy is the *Racism. It Stops with Me* campaign. More than 160 organisations have become signatories to the campaign and more than 900 individuals have signed up to the campaign as supporters. [82]

46. In June 2012, an independent panel of eminent community leaders released a report resulting from its inquiry into Australian Government services to ensure they are responsive to the needs of Australians from culturally and linguistically diverse backgrounds. The panel's recommendations call for the strengthening of this policy, through identifying

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[76] *1951 Convention Relating to the Status of Refugees,* art 31.

[77] *Non-refoulement* refers to the obligation not to return a refugee to a situation where his or her life or freedom would be threatened, and not to return a person to a country where there are substantial grounds for believing that he or she would be in danger of being tortured.

[78] See Australian Human Rights Commission, *Asylum seekers, refugees and human rights: A snapshot report* (2013). At http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report *(viewed 1 November).*

[79] Parliament of Australia, Parliamentary Joint Committee on Human Rights, *Ninth Report of 2013: Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation* (2013), para 2.200. At www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/92013/index (viewed1 October 2013).

[80] UPR Recs 59, 61-65.

[81] In 2012–2013, the Australian Human Rights Commission received a total of 500 complaints under the *Racial Discrimination Act 1975* (Cth), which was a 5% increase in the number of complaints made under the Act in the previous year. 192 of the complaints were on the ground of racial hatred, which was a 59% increase from the previous year. A large quantity of the racial hatred complaints related to material on the internet. Alleged cyber-racism accounted for 41% of racial hatred complaints, which was also an increase from the previous year, where only 17% of racial hatred complaints related to internet material.

[82] Led by the Australian Human Rights Commission and comprising the Attorney-General's Department, Department of Families, Housing, Community Services and Indigenous Affairs, Department of Immigration and Citizenship, Australian Multicultural Council, National Congress of Australia's First Peoples and Federation of Ethnic Communities' Council of Australia.

clearer and more specific obligations that departments and agencies are required to meet.[83] There is also an expectation that the principles of access and equity will influence all government social policy areas. The Australian Government responded to the panel's recommendations in March 2013 and supported all the recommendations charged with inquiring into the responsiveness of government services to the needs of people from culturally and linguistically diverse backgrounds.[84]

47. ACHRA welcomes the release of the federal Joint Standing Committee on Migration report on the inquiry into multiculturalism in Australia in March 2013. The report affirms that multiculturalism is a success story, and stands as a good example to the world on how to build a cohesive society. [85] ACHRA encourages the Government to implement the Committee's recommendations.[86]

### 1.5 Right to life, liberty and security of the person Migrants, refugees and asylum seekers

48. A number of countries raised concerns in relation to the Australian criminal justice system. ACHRA notes with concern that children under 18 years have been transferred from youth justice facilities to adult prisons in a number of jurisdictions including Victoria and Western Australia. In 2013, the Australian Human Rights Commission was granted leave to intervene in proceedings in the Supreme Court of Western Australia in a matter concerning the transfer of children from the Banksia Hill Detention Centre to Hakea Prison, which is an adult facility in Western Australia.87 As at 10 October 2013, the Western Australian Department of Corrective Services reported that 58 juveniles remained at Hakea Prison.[88]

49. ACHRA urges State Governments to review incarceration practices to ensure that vulnerable young people are protected. ACHRA recommends that there must be greater focus on reinvestment, in addition to a greater focus on evidence based practice. ACHRA welcomes the Victorian review of the policy and procedures governing such transfers to improve compliance with international obligations, and the *Charter of Human Rights and Responsibilities Act 2006* (Vic), but reiterates that the placement of children in solitary

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[83] See Australian Human Rights Commission, 'Statement by Race Discrimination Commissioner welcoming the recommendations of the Access and Equity Inquiry Panel' (Media Release, 5 July 2012). At https://www.humanrights.gov.au/news/media-releases/statement-race-discrimination-commissioner-welcoming-recommendations-access-and (viewed 23 October 2013).

[84] See Australian Government, *Government Response to the Recommendations of the Access and Equity Inquiry* (2013). At http://www.immi.gov.au/living-in-australia/a-multicultural-australia/government-approach/government-services/multicultural-access-and-equity.htm (viewed 23 October 2013).

[85] See Parliament of Australia, House of Representative Committees, *Inquiry into Multiculturalism in Australia*. At http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mig/multiculturalism/media.htm (viewed 23 October 2013).

[86] Recommendations include: supporting the National Anti-Racism Strategy; rebuilding Australia's research capacity in this field, especially in qualitative research; factoring cultural and linguistic diversity into the Government's Social Inclusion Agenda; having greater flexibility in English language training and support for micro enterprises, especially for women.

[87] Australian Human Rights Commission, 'Commission seeks to intervene in juvenile detention case' (Media Release, 10 April 2013). At http://www.humanrights.gov.au/news/stories/commission-seeks-intervene-juvenile-detention-case (viewed 11 November 2013).

[88] Government of Western Australia, Department of Corrective Services, *Weekly Offender Statistics (WOS) Report as at 10 October 2013 00.00 hours*, p 3. At http://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/statistics/2013/cnt131010.pdf (viewed 22 October 2013).

confinement in adult prison may amount to degrading treatment and is inconsistent with Australia's obligations under the CRC and ICCPR.

50. ACHRA is also concerned about the current 'doli incapax' common law rule of criminal responsibility and would prefer to see the age raised to 12 years of age, as other reviews have recommended.[89]

51. The issue of policing was raised during Australia's review.[90] In Victoria there have been community concerns about police interaction with young people and allegations of racial profiling.[91] ACHRA welcomes Victoria Police's community consultation on its field contact policy and cross-cultural awareness training.[92]

52. ACHRA has significant concerns about the effects of a number of laws passed by Queensland and Western Australian parliaments in October 2013 to curtail criminal activity among bikie gangs throughout the state in that they may breach Australia's obligations under the ICCPR.[93]

## 2. Key national priorities, initiatives and commitments

53. The Paris Principles set out the minimum standards required by national human rights institutions to be considered credible and to operate effectively.[94] In order to be effective and granted an 'A status', national human rights institutions must be independent, adequately funded and have a broad human rights mandate. ACHRA encourages the new Government to ensure that the Australian Human Rights Commission receives adequate core funding through the regular federal budget process. ACHRA further notes that the Commission's functions could be enhanced, through legislative amendment, to provide a clearer focus on individual liberties, fundamental freedoms and human rights reflected in the common law.

54. As Australia moves into the second half of its UPR cycle, ACHRA encourages the Government to continue its commitment to the UPR process and employ the same level of consultation and engagement with civil society and the Australian Human Rights Commission in the lead up to the next appearance in October – November 2015.

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[89] For example, the ACT Human Rights Office, Human Rights and Discrimination Commissioner, *Human Rights Audit of Quamby Youth Detention Centre* (2005). At http://www.hrc.act.gov.au/res/Quamby%20Audit-final%2030%20June%202005_.doc (viewed 4 November 2013); ACT Children & Young People Commissioner and the Human Rights & Discrimination Commission. *ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission.* At http://www.hrc.act.gov.au/content.php/content.view/id/251 (viewed 29 November 2013).

[90] UPR recs 88, 95 and 96.

[91] S Donovan, 'Victoria Police settles racial profiling case,' *ABC News*, 18 Feb 2013. http://www.abc.net.au/news/2013-02-18/police-agree-to-new-procedures-to-combat-racism/4524770 (viewed 11 November 2013).

[92] Victoria Police, *Community Consultation,* http://www.police.vic.gov.au/content.asp?Document_ID=39350 (viewed 12 November 2013).

[93] *Vicious Lawless Association Disestablishment Act 2013 (QLD), Tattoo Parlours Act 2013* (QLD), *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013 (QLD).*

[94] Principles relating to the Status of National Institutions (The Paris Principles) adopted by UN General Assembly, *National institutions for the promotion and protection of human rights,* UN Doc A/RES/48/134 (20 December 1993).

# Appendix

## Calendar of upcoming key UN treaty dates

| *Treaty* | *Key Dates* |
|---|---|
| Convention on the Rights of the Child (CRC) | Australia to appear before the committee in May 2012 |
| Convention Against Torture (CAT) | Next report due 2012 |
| Convention on the Rights of Persons with Disabilities (CRPD) | Australia likely to appear before the committee in 2012 |
| Convention on the Elimination of Racial Discrimination (CERD) | Next report due 2012 |
| International Covenant on Civil and Political Rights (ICCPR) | Next report due 2013 |
| International Covenant on Economic Social and Cultural Rights (ICESCR) | Next report due 2014 |
| Convention on the Elimination of Discrimination Against Women (CEDAW) | Next report due 2014 |